

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT**

UNITED STATES OF AMERICA

VS.

DONALD FELL

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CRIMINAL 5:01-cr-00012

**DONALD FELL’S MOTION TO DISMISS AND/OR TO STRIKE THE AMENDED
NOTICE OF INTENT TO SEEK PENALTY OF DEATH BECAUSE OF THE
UNCONSTITUTIONALITY OF SELECTING A FAIR, IMPARTIAL AND
REPRESENTATIVE “DEATH QUALIFIED” JURY IN A STATE WHERE MOST
CITIZENS OPPOSE THE DEATH PENALTY**

Now Comes Donald Fell, through his undersigned counsel and moves this Honorable Court for an order dismissing and/or striking the Amended Notice Of Intent To Seek Penalty Of Death. (Doc. 609) because it would violate the Fifth, Sixth, and Eighth Amendments to seek a “death qualified” jury in a state where most citizens oppose that penalty. A “death qualified” jury could not truly serve as the conscience of the community in Vermont, and would not be fair, impartial, or representative of the community.

Accordingly and as described in greater detail in the accompanying Memorandum, Mr. Fell respectfully requests that this Court strike the death notice in this case or, alternatively, grant an evidentiary hearing on this issue should it determine that the current record is inadequate to support granting the requested relief.

WHEREFORE, for the reasons described in greater detail in the accompanying Memorandum, Mr. Fell respectfully requests that this Court dismiss and/or to strike the Amended Notice Of Intent To Seek Penalty Of Death.

Dated at San Francisco, California, this 16th day of November, 2015.

Respectfully Submitted,

MICHAEL N. BURT
KERRY B. DeWOLFE
JOHN T. PHILIPSBORN

By: /s/ Michael N. Burt

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2015, I electronically filed with the Clerk of

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using the CM/ECF system. The CM/ECF system will provide service of such filing(s)
via Notice of Electronic Filing (NEF) to the following NEF parties:

Michael N. Burt, Esq.
Kerry B. DeWolfe, Esq.
John Phillipsborn
William B. Darrow, Esq., Assistant United States Attorney
Bruce R. Hegyi, U.S. Dept. Of Justice

I also caused to be served, by U.S. Postal Service, the following non-NEF party:

Donald Fell
Register Number 05306-010
The Metropolitan Detention Center
P.O. Box 329002
Brooklyn, NY 11232

Dated at San Francisco, California, this 16th day of November, 2015.

By: /s/ Michael N. Burt

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